

YALE LAW JOURNAL

Vol. IX.

APRIL, 1900.

No. 6

RESULTS OF EXPANSION.

In January, 1896, the territory of the United States lay in one continent, in a compact mass, its longest diameter being about three thousand miles. Its people, though differing in intelligence, were so far homogeneous that they could be safely intrusted with the rights of civil liberty guaranteed by the Constitution. To-day, the territory of the United States stretches over twelve thousand miles of land and sea, its various parts separated by thousands of miles of water from each other. Its inhabitants are some of them at such a low stage of human development as to be beyond the pale of constitutional guarantees. Though belonging in some sense to the United States, they cannot be for a moment considered as citizens of the United States.

In January, 1896, the army of the United States consisted of less than 25,000 men. To-day it numbers 100,000. For the year ending June 30, 1896, the expenditure for the war and navy departments was in round numbers \$78,000,000. For the twelve months ending with December, 1899, the expenditure for the same purpose was \$293,000,000. The change in conditions, when we consider the brief period in which it has occurred, is simply amazing. This change has introduced a new line of cleavage into our politics and given rise to two rival schools of political thought, which may be fairly described as the expansionist and the anti-expansionist or anti-imperialist. The one looks upon these events as but the natural working out of the destinies of the nation. The other views with alarm such a departure from its traditions. The issue between these two parties has not always been fairly stated. The anti-imperialist is not necessarily pledged to any retrograde step as regards the possessions already obtained. He views their acquisition with re-

gret. He believes that they are a disastrous inheritance, and hopes that some honorable method may be found of relieving ourselves of the responsibility. He protests vigorously against making what has already been done a precedent for still further extension. But he does not necessarily believe in the immediate abandonment of such possessions without regard to the interests of the inhabitants, nor to obligations of honor to other nations. On the other hand, the expansionist, believing as he does, that the additions are a benefit to the nation and a part of its destiny, is, by the necessity of his position, committed to a policy of still further expansion. Conversation with intelligent advocates of this policy will call forth an enunciation of principles which involve an enormous development of their plans. Without any hesitation, they announce an intention of competing with the other great nations for a foothold upon every continent and a share in the settling of all the problems which are arising in regard to the division of unsettled territories, or territories inhabited by uncivilized nations.

In the brief space allotted to me I propose to call your attention to some of the considerations which lead me to believe that the acquisition of territory at remote distances from our natural borders, inhabited by barbarous or semi-civilized people, is fraught with disaster to this country.

That the inhabitants of this country have hitherto been the freest in the world, that they have been subject to less interference with their individual liberties than those of other countries, will be, I presume, admitted by all. We do not owe this to any remarkable or unheard of wisdom on the part of our legislators, nor altogether to our written Constitution. Laws on paper are but poor protection to individual rights when popular passions, or great necessities, call for their sacrifice. The solution of the question why we have been so politically blest must be found somehow in our natural situation. Accordingly, we find we have been separated on all sides save one, from the territory of any great power capable of menacing our security. Our isolation is the one natural condition in which we differ from all other nations. The great powers of the continent may be fairly described as always in a condition of war. If not engaged in active hostilities, they are always in a state of armed preparation for instant action, which is equally burdensome and expensive. The inhabitants groan under intolerable financial burdens which confiscate a large portion of the earnings of labor. Their best years are occupied in the fruitless labors of military drill. In such an atmosphere, civil liberty cannot secure a strong or har-

monious growth. Some of the best elements of our population consist of native born citizens of European countries, who have come to this country to escape the conditions which I have described. The expansionist policy necessarily involves the throwing away of all the natural advantage which our isolation has given us. The right of occupation involves the duty of protection. The further the territory possessed is from the base of operations, the greater must be the difficulty and expense of furnishing that protection. In this respect the protection of each one of these remote regions must always demand the maintenance of a very large naval and military force, which must be resident because it cannot be sent to such great distances at short notice.

The United States has been distinguished from all other nations in that it has not been a military power. Its numerically insignificant army and navy have been, the one a mere internal police force, and the other simply enough to make a respectable showing in the ports of other nations. The change in its condition referred to necessarily involves its transition into a military power, with all that that involves. If the expansionist policy is to prevail, we must henceforth, if not actually at war, be at all times prepared for hostilities and for the protection of distant colonies, some of which will be in close proximity to the territory of other nations. We shall be involved in discussions as to the division of lands on other continents, out of which controversies will continually arise. The old Latin phrase, *inter arma silent leges*, involves a great truth. In time of war there are no such things as individual rights, is a free translation, following the spirit if not the letter, of the Latin. Those who recollect the Civil War know what that means. In times when the nation was struggling for its existence, all patriotic citizens were ready to renounce for the time being their individual rights. For five years, full individual liberty scarcely existed. The citizen was not at liberty to criticise beyond a certain extent the operations of the government. The extent of his right of free speech, his right of individual action, was bounded by military necessities. War necessarily involves this to a certain extent. Not only active hostilities but armed preparation for such emergencies of necessity involves a great sacrifice of those rights and liberties which this government was professedly organized to secure. That we have been enabled to maintain these rights to the extent we have is chiefly because of the one hundred and ten years since the adoption of the Constitution, we have had at least one hundred of unbroken peace. That

the European nations have not enjoyed the same freedom is because regard for their own safety has compelled them to be constantly in arms. The professional soldier, whatever his virtues, is not a free citizen. His principle of action is unreasoning obedience to arbitrary authority. He does not generally exercise his political rights. He scorns discussion and is always for prompt action. The obedience of the citizen of a free commonwealth is the result of the conclusion of his reason that the commands are, on the whole, wise and just, or that it is better in the interests of law and order to submit. Discussion is the breath of the life of civil liberty. Where a military spirit prevails among the people, freedom must grow less. The experience of the last few years is sufficient to prove that. Five years ago, the citizen scarcely felt the power of the general government. It imposed no tax that he could perceive and no restraint upon his liberty of action. He paid a tariff tax, perhaps, in case he had occasion to import goods. He paid the United States for carrying his mail. Outside of that, so far as the general government went, he was absolutely free to engage in any occupation he saw fit and to dispose of the fruits of his industry, during his life or after his death by will, without tax, imposition or restriction. How is it now? Does he possess the same freedom that he had five years ago?

There are two systems of taxation; taxation upon property and taxation upon liberty. The United States Supreme Court, in the Income Tax case, has practically decided that the United States can only tax liberty. It cannot tax property. At least, such taxes must be apportioned in accordance with a rule which makes any such imposition practically impossible. All the burdens of war, therefore, must be supported by burdens or impositions upon free action.

We have been engaged for the last year in a war which, except for the deplorable loss of valuable lives, can scarcely be dignified by that name. We have had an army chasing savages around the swamps of the Philippines. And what has been the result? The citizen cannot dispose of his real estate, or any of his personal property, without asking the consent of the United States and paying for that privilege. He cannot pay his debts in the ordinary way in which they are paid among business men without paying the United States for that privilege. He cannot give his property, even in charity, after his death, under the provision of his State law, without having the United States Government stretch out its hands

and confiscate a portion before it reaches the beneficiary. He cannot, as an honest man, give to his creditor a written acknowledgment of the debt he owes him unless he has the wherewithal to pay the United States for that privilege. The storekeeper cannot sell a bottle of medicine to a sick man without also paying to this great and beneficent government of the United States a certain sum of money to enable it to hound Tagals and Negritos through tropical forests. If he wants to deed his real estate, his condition is most parlous. No matter how far he lives from the centres of population, he must travel to the internal revenue office, arriving there during such business hours as it suits the Government to keep the office open, purchase a stamp, the cost of which is fixed by a certain arbitrary rule based upon the supposed value of the thing sold, independent of whether the transaction is beneficial to the parties or not, and affix that stamp. He must then not only erase it, affixing his initials, but under a new regulation, he must cut the stamps in a certain way. If he does not do all these things, he is liable to severe penalty. The amount of friction, embarrassment and general annoyance to business and individual transactions involved in these regulations is enormous. The right to tax is the right to destroy.

Granting once the right to tax, there is no limit to the amount. Nor have the possible methods of taxation been exhausted. The United States may go further and tax every man for the right even to exercise any means of livelihood. How is it with the right of free speech, the right of the mails, free communication? We hear distinguished members of Congress, for exercising the right of free discussion, denounced as traitors. Eminent publicists have been threatened with arrest, their mails broken into, because they chose to send to certain soldiers arguments against the Philippine war. All these things are as yet in the bud. If already a large portion of our freedom of action has been sacrificed what are we to expect when this glorious expansion policy has had its full development? When we are to have our share in the division of China, our colonies and stations in Africa, and in all the uttermost parts of the earth. Where a hundred thousand men is now necessary, five hundred thousand may become necessary, and the burdens and impositions which already so irritate the citizen must be indefinitely increased.

We are incorporating into our politics new principles which must have enormous consequences. The founders of the government put forward this declaration as their principle of action, that

all men were born free and equal. They were not foolish enough not to perceive that in one sense this declaration was absolutely false. Everybody knows that the native of Dahomey is not equal to the native of Massachusetts, that he is not even born free. On the contrary, he is born an abject slave, without any rights whatever. But this declaration, though false in an absolute sense, was true in this sense, that it was the basis upon which this government was organized, and as regards the affairs of the nation was a true working rule. It was one of those fictions, if you please, like the rule of the English Constitution, that the king can do no wrong; false in fact, but true in a sense, because it involves the principle of ministerial responsibility. So it was the true spirit of this government that all men under its control should be free and equal. Its institutions were of such a nature that they were unworkable on any other theory, and that they could not be adapted to any people of which this proposition could not be truthfully affirmed. The fathers of the nation attempted a mental reservation. They tried to incorporate a secret exception and qualification, that all men were free and equal provided their skins were white. But their exception in its results only proved the general truth. After seventy years of trial, that exception nearly broke up the existence of the nation. After many decades of controversy and five years of war, we got rid of it, and then for the first time there was rest and harmony. Disregarding the lessons of this disastrous experiment, we are now seeking to incorporate another exception. We are about to say that all men are born free and equal who live within the limits of the United States of America, as they were prior to the acquisition of new territories, but that the natives of Porto Rico, or the inhabitants of the Philippines, though subjects, are not free and equal, are in no sense endowed with the constitutional rights. This exception is necessary if we are to go on acquiring colonies of that character. To apply the jury system and the ordinary methods of administering law, and popular institutions, to nations like the Tagals and the Negritos is utterly impossible. If we are to own these countries, we must own them as masters and the natives must be subjects simply and not citizens.

It is true in politics that a nation cannot be a master without its citizens becoming, to a certain extent, slaves; without sacrificing a large portion of their liberties. That a change is coming over the spirit of a large body of the people of the United States, is indicated in a variety of ways. We have even invented of late years a new

term for the national flag. The advocates of this vast expansion scheme have come to speak of the flag as Old Glory, a term that might properly be applied to the tricolor of France, but would scarcely have been deemed appropriate in former times to our own national standard. It has never hitherto been an emblem of conquest. It is now sought to make it such. The more it becomes an emblem of conquest the less it will become an emblem of freedom. If the expansion policy is to prevail, it must wave over subject nations without full political rights. It must also float over a people who, for an empty dream of foreign empire, have sacrificed a large portion of their freedom of action.

TALCOTT H. RUSSELL.